

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**THE BANK OF NEW YORK
MELLON, fka THE BANK OF
NEW YORK, as Trustee for the
Certificateholders of CWHEQ, INC.,
Home Equity Asset Backed
Certificates, Series 2006-S7,**

Appellant,

v.

1:13-cv-2945-WSD

**JOSHUA STERLING WALL and
MICHELLE ILONA WALL,**

Appellees.

ORDER

This matter is before the Court on Bank of America, N.A.’s Motion for Summary Affirmance Subject to Appellate Review [3] and Motion to Dismiss Appeal [6].

Joshua Sterling Wall and Michelle Ilona Wall (the “Debtors,” and together with Bank of America, the “Parties”), filed a chapter 7 petition in the U.S. Bankruptcy Court for the Northern District of Georgia. The Debtors’ house is subject to two mortgage liens, and, at the time Debtors’ motion was filed, Bank of

America was the holder and/or servicer for the junior of the two liens on the Debtors' property (the "Junior Lien"). Because the outstanding balance on the first mortgage exceeded the fair market value of the house, the Debtors filed a motion seeking to strip off the Junior Lien under Section 506(d) of the Bankruptcy Code.

On July 15, 2013, Bank of America filed a response to the Debtors' motion expressly reserving its right to seek appellate review of the bankruptcy court's decision. In light of the Eleventh Circuit's decisions in McNeal v. GMAC Mortgage, LLC, 477 F. App'x 562, 564 (11th Cir. 2012) and Folendore v. Small Business Administration, 862 F.2d 1537 (11th Cir. 1989), the bankruptcy court entered an Order granting the Debtors' motion to strip Bank of America's Junior Lien. The bankruptcy court held that under the reasoning of McNeal and the holding of Folendore, Bank of America's second-lien may be "stripped off," or "voided," under Section 506(d). Bank of America filed timely notice of appeal to this Court.

Since Bank of America filed its notice of appeal to this Court, however, the Junior Lien was service transferred to, and is now serviced by, Nationstar Mortgage LLC. Bank of America no longer holds or services the Junior Lien. Bank of America states that it informed Nationstar Mortgage LLC of the pendency of this case but Nationstar Mortgage LLC did not respond to Bank of America's


inquiries regarding this appeal. Bank of America requests that the Court dismiss the appeal with prejudice.

Accordingly,

IT IS HEREBY ORDERED that Bank of America, N.A.'s Motion for Summary Affirmance Subject to Appellate Review [3] is **DENIED AS MOOT**.

IT IS FURTHER ORDERED that Bank of America, N.A.'s Motion to Dismiss Appeal [6] is **GRANTED**. This appeal is **DISMISSED WITH PREJUDICE**.

SO ORDERED this 2nd day of January 2014.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE